

POLICY ON SEXUAL HARASSMENT

**PROPOSED BY THE
ADVISORY COMMITTEE ON SEXUAL HARASSMENT**

SUBMITTED TO THE BOARD OF GOVERNORS

MAY 16, 1990

PRESENTATION OF THE POLICY ON SEXUAL HARASSMENT

SUBMITTED TO THE BOARD OF GOVERNORS, MAY 16, 1990

An Advisory Committee on Sexual Harassment, representing faculty, students, staff and administration, was established by the Vice-Rector, Institutional Relations and Finance in April 1988 and given a mandate to:

- develop policies and procedures on sexual harassment;
- make recommendations to the Vice-Rector, Institutional Relations and Finance, regarding their implementation; and,
- assist in the development of sexual harassment education programmes for the Concordia University community.

A first report entitled "Proposed Policy and Procedures on Sexual Harassment" was submitted to the Vice-Rector on June 13, 1989. That report was the result of over twenty meetings and as many long, intense discussions.

Copies of the report were sent to representatives of all constituent groups for University-wide consultation. After receiving written comments on the report, the Advisory Committee then met with those who expressed an interest in discussing the report in person.

As a result of the many comments received, the Committee underwent another series of intensive meetings, arriving at the recommendations contained in a second report, submitted to the Vice-Rector on February 2, 1990.

Further consultations were held with members of the Office of the Rector and with representatives of the Supervisory Board of the Code of Conduct (Non-Academic). A Final Report was presented to the Vice-Rector on April 9, 1990, which consists of an annotated version of the Policy on Sexual Harassment submitted to the Board of Governors today.

As a result of the extensive consultation process, the members of the Advisory Committee are convinced that the Policy on Sexual Harassment presented to the Board reflects the major concerns of all the constituent groups at Concordia and that it will receive their full support and collaboration.

Therefore, in keeping with its mandate, the Advisory Committee recommends that the Policy on Sexual Harassment be adopted by the Board of Governors.

This policy defines sexual harassment, provides complaint procedures to deal with such cases, and creates an educational infrastructure for the prevention of occurrences of sexual harassment.

MEMBERS OF THE ADVISORY COMMITTEE ON SEXUAL HARASSMENT

Janice Flood Turner, CUPFA

Cynthia Fownes, GSA

Kai Lee, Technicians' Union

Shirley McLeod, Past Policy and Education Advisor on Sexual
Harassment

Harald Proppe, Associate Vice-Rector, Institutional Relations
and Finance

Isabelle St-Martin, Chair of the Advisory Committee
and Policy and Education Advisor on Sexual Harassment

Stephen Scheinberg, CUFA

Maureen Stacey, CUNASA

Beverley Wray, CUSA

POLICY ON SEXUAL HARASSMENT

STATEMENT OF PURPOSE

1. The University considers sexual harassment in all its forms, whether subtle or overt, to be a serious offence. Sexual harassment is a form of discrimination, of violence or both. It infringes on fundamental human rights and undermines personal dignity and integrity. It interferes with the work, study and academic environment of the University.
2. Concordia University endeavours at all times to provide a working and learning environment that is supportive of scholarship and research and of the fair treatment of all members of the University. The basis for interaction among all members of the University must be mutual respect, trust, cooperation and understanding.
3. The University does not condone behaviour, such as sexual harassment, that undermines the freedom, dignity, trust or productivity of any faculty, staff, or student.
4. Although men can be victims of sexual harassment, women are most often the targets of these practices. Sexual harassment can be a form of abuse of authority or a manifestation of the perception of women's subordinated societal status. It can be exacerbated by discrimination on other grounds such as disability, race, religion, ethnic origin or sexual orientation. It is a serious equity issue.
5. The University has the legal and moral responsibility to ensure an environment free from sexual harassment for all its members.
6. To fulfil this responsibility, the University defines, in this policy, the term sexual harassment, provides a choice of procedures for resolution, and outlines a range of disciplinary measures up to and including dismissal or expulsion. An infrastructure to promote the prevention of incidents of sexual harassment through education is established.

DEFINITION¹

7. Conduct of a sexual nature such as, but not limited to, sexual assault, verbal abuse or threats of a sexual nature, unwelcome sexual invitations or requests, demands for sexual favours, or unwelcome and repeated innuendos or taunting about a person's body, appearance or sexual orientation, constitutes sexual harassment when:
 - a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, academic status or academic accreditation; or,
 - b. submission to or rejection of such conduct by an individual is used as the basis for employment, or for academic performance, status or accreditation decisions affecting such individual; or,
 - c. such conduct interferes with an individual's work or academic performance; or,
 - d. such conduct creates an intimidating, hostile or offensive working or academic environment.

JURISDICTION²

8. The following individuals or bodies may initiate a complaint:
 - a. any member of the University;
 - b. the University, on its own behalf or on behalf of one of its members, if it chooses hearings as the procedure for resolution;
 - c. any duly constituted University association or union, on behalf of one of its members, if it chooses hearings as the procedure for resolution; and,
 - d. any person seeking to become a member of the University, in circumstances directly affecting their application to become a member.

¹ This definition is the same as that adopted in May 1989 by the Canadian Association of University Teachers (CAUT) in its "Policy on Professional Ethics and Professional Relationships."

² Complaints about behaviours, other than sexual harassment, which violate the University's governing principles fall under the jurisdiction of the Code of Conduct (Non-Academic) or of the Ombuds Office.

9. The following individuals or bodies may be the subject of a complaint:
 - a. any member of the University;
 - b. the University; and,
 - c. any duly constituted University association or union.
10. Members of the University are defined as faculty, staff and students.
11. Complaints may be made about any violation to this policy taking place on University premises, be they rented or owned, or in the course of any activities conducted by or on behalf of the University on other premises.
12. Reprisal or threat of reprisal against a complainant or against a person who has participated in proceedings under this policy, whether the complaint was substantiated or unsubstantiated, may constitute grounds for a complaint under this policy or under the Code of Conduct (Non-Academic).

GENERAL PRINCIPLES

13. Complaints shall be made in writing and complainants shall be willing to be identified to the respondent in order for resolution to occur.
14. The complainant shall choose the procedure for resolution of the complaint; this choice is without any future prejudice.
15. Both complainants and respondents have the right to choose a member of the University, called an advisor, to accompany them throughout the proceedings.
16. Failure to comply with a resolution agreed upon as a result of the mediation or the administrative resolution procedures may result in disciplinary action by the University.
17. A complaint may be withdrawn at any time prior to the conclusion of the hearing procedure, thereby terminating the procedures.

GENERAL PROCEDURES

18. The term "days" shall refer to working days.
19. All deadlines are binding, except where the possibility of extension is stipulated herein.
20. A detailed complaint shall be made in writing to the Sexual Harassment Officer as soon as possible, but no later than within nine (9) months of the alleged incident or of its discovery.
21. The complainant shall make a written request, within five (5) days of the filing of the complaint, to proceed with one of the following procedures for resolution:
 - a. administrative resolution; or,
 - b. mediation; or,
 - c. hearing procedure.
22. If administrative resolution fails, the complainant may opt either for mediation or for the hearing procedure. If mediation fails, the complainant may only choose the hearing procedure. Once a complainant selects the hearing procedure as the option for resolution, there is no further recourse upon its conclusion, except for appeal.

ADMINISTRATIVE RESOLUTION

23. A complainant may request, in writing, administrative resolution by an Appropriate Authority as the first stage in the process of resolution.
24. Within five (5) days of receipt of the request for administrative resolution, the Sexual Harassment Officer shall forward a copy of the complaint and of the request to the respondent and to the Appropriate Authority.
25. The Appropriate Authority is:
 - a. the Academic Dean, in the case of a complaint against a faculty member or a person employed in a faculty or in the Division of Graduate Studies; or,

- b. the Academic Dean or the Director of Continuing Education, in the case of a complaint against a student; or,
 - c. the Chairman or Chairwoman of the Board of Governors, in the case of a complaint against the Rector; or,
 - d. the Senior Administrator (Rector, Vice-Rector, Secretary-General, Associate Vice-Rector or Director, as the case may be) to whom the respondent reports most directly, in the case of a complaint against any other employee of the University.
26. The Appropriate Authority shall assist the parties in the settlement of the complaint as expeditiously as possible, but in any case not more than twenty (20) days after receiving the request for administrative resolution. This delay may be extended, in exceptional circumstances, by the Sexual Harassment Officer.
27. The Appropriate Authority may consult with the Sexual Harassment Officer in order to resolve the complaint.
28. Administrative resolution may result in a mutually acceptable resolution or in failure to resolve.
29. If a mutually acceptable resolution is agreed upon, the Appropriate Authority shall write a report detailing the steps taken to resolve the complaint and have it signed by the complainant and the respondent within five (5) days of completion of the process. The report of resolution shall immediately be sent to both parties and to the Sexual Harassment Officer.
30. If there is failure to resolve, the Appropriate Authority shall write a detailed report to this effect, within five (5) days of completion of the process, and shall immediately send the report to the Sexual Harassment Officer and to both parties.
31. If there is failure to resolve and no additional written request for resolution through the use of another procedure is received from the complainant within ten (10) days of the date of transmission of the report of failure to resolve, the complaint shall be deemed to have been withdrawn.

MEDIATION

32. A complainant may request, in writing, mediation in the following circumstances:
 - a. as the first stage in the process of resolution; or,
 - b. if administrative resolution fails.
33. In the case of 32b., a complainant shall make a request for mediation to the Sexual Harassment Officer, within ten (10) days of the date of transmission of the report from the Appropriate Authority that administrative resolution has failed.
34. Within five (5) days of receipt of the request for mediation, the Sexual Harassment Officer shall forward a copy of the complaint and of the request to the respondent, and shall seek an agreement from the respondent to participate in mediation. The respondent shall reply within ten (10) days of the date of transmission of this request.
35. If the respondent has not agreed to participate in mediation within fifteen (15) days of the date of transmission of the request to participate, the Sexual Harassment Officer shall write a factual report of failure to resolve, and send copies to both parties.
36. If both parties consent to mediation, the Officer shall provide them with a trained Mediator, within ten (10) days of agreement to mediate.
37. The mediation process shall be concluded as expeditiously as possible, but in any case not more than twenty (20) days after the appointment of a Mediator. This delay may be extended, in exceptional circumstances, by the Sexual Harassment Officer.
38. If a mutually acceptable resolution is agreed upon, the Mediator shall write a report and have it signed by the complainant and the respondent within five (5) days of completion of the process. The report of resolution shall immediately be sent to both parties and to the Sexual Harassment Officer.
39. If a resolution is not reached, the Mediator shall issue a report to this effect, within five (5) days of completion of the process, and shall immediately send copies to the complainant, the respondent and the Sexual Harassment Officer.
40. If there is failure to resolve and no additional written request for resolution through the use of the hearing procedure is received from the complainant within ten (10) days of the date of transmission of the report of failure to resolve, the complaint shall be deemed to have been withdrawn.

HEARING PROCEDURE

41. A complainant may request, in writing, the hearing procedure before a Sexual Harassment Hearing Board in the following circumstances:
 - a. as the first stage in the process of resolution; or,
 - b. if administrative resolution fails; or,
 - c. if mediation fails.
42. In the case of 41b. or 41c., the complainant shall make a request to the Sexual Harassment Officer, within ten (10) days of the date of transmission of the report of failure to resolve.
43. Within five (5) days of receiving a request for the hearing procedure, the Sexual Harassment Officer shall forward a copy of the complaint and of the request to the respondent and to the Code Administrator.
44. The Standing Panel, consisting of pools of students, staff and faculty, as established under the Code of Conduct (Non-Academic), shall receive appropriate training.
45. Members of the Standing Panel shall elect from among themselves a Chair to preside over the Sexual Harassment Hearing Boards. The Chair shall be a permanent, non-voting member of every Hearing Board established to hear complaints of sexual harassment and shall:
 - a. maintain order during the hearings;
 - b. answer procedural questions;
 - c. schedule hearings;
 - d. grant or deny delays; and,
 - e. arrange to tape-record the hearings.
46. Within five (5) days of receipt of a request for the hearing procedure, the Code Administrator shall request a written response to the nature of the complaint from the respondent. The respondent shall forward his or her reply within ten (10) days of the date of transmission of this request.

47. Within fifteen (15) days of receipt of a request for the hearing procedure, the Code Administrator shall constitute a four-person Sexual Harassment Hearing Board from the Standing Panel. The Hearing Board shall be composed of:
 - a. the Chair of the Sexual Harassment Hearing Boards;
 - b. one member from a pool that has been selected by the complainant. If so desired, the gender of the member may also be selected by the complainant;
 - c. one member from a pool that has been selected by the respondent. If so desired, the gender of the member may also be selected by the respondent; and,
 - d. one member selected by the Code Administrator from any pool.
48. Prior to the hearing, the Code Administrator shall:
 - a. inform both parties of the Hearing Board's composition;
 - b. inform both parties and members of the Hearing Board of the date and time of the hearing, at least five (5) days in advance;
 - c. provide both parties and members of the Hearing Board with a list of the advisors and a tentative list of witnesses; and,
 - d. provide both parties and members of the Hearing Board with copies of the complaint and the response.
49. All hearings shall be closed and confidential unless one or both parties petitions the Hearing Board to have an open hearing, in which case the Hearing Board may decide, at its discretion, to admit members of the University.
50. At the beginning of the hearings, the Hearing Board may grant, at its discretion, intervenor status to the University or to any duly constituted University association or union, and may restrict their comments in order to avoid duplication of testimony.
51. All Sexual Harassment Hearing Boards shall adhere to the principles of natural justice including, minimally, the rights to:
 - a. make oral or written statements;
 - b. object to the choice of Hearing Board members for valid reasons;
 - c. defend oneself;
 - d. present witnesses;
 - e. offer rebuttal; and,
 - f. make representations on sanctions and remedies.
 Furthermore, advisors have the right to speak on behalf of the party they are accompanying.
52. The hearing shall be concluded as expeditiously as possible, but in any case not more than forty (40) days after the Hearing Board has been constituted. This delay may be extended, in exceptional circumstances, by the Chair of the Sexual Harassment Hearing Boards.

53. Within ten (10) days of concluding the hearings, the Hearing Board shall write a report and shall decide if there is clear and convincing evidence that sexual harassment as defined in article 7 has occurred, thus constituting a violation of this policy. The burden of proof is on the complainant.
54. Decisions of the Hearing Boards shall be made by a majority vote.
55. Reports of the Hearing Boards shall present a summary of the facts, shall include reasons for the decision or recommendations, and shall be signed and dated. They shall immediately be sent to both parties, the Sexual Harassment Officer and the Vice-Rector responsible for the application of this policy.
56. The Vice-Rector responsible for the application of this policy shall be designated by the Rector.
57. If a violation of this policy has occurred, the Hearing Board shall request that the Sexual Harassment Officer forward any records of resolution that have been filed on the respondent, in this case or in any other case, and shall use this information in recommending appropriate sanctions and remedies.
58. Within ten (10) days of the date of transmission of the decision of violation of this policy, the Hearing Board shall provide the opportunity to both parties to submit written or oral comments on appropriate sanctions and remedies.
59. The Hearing Board shall write a report to the Vice-Rector to recommend appropriate sanctions and remedies within fifteen (15) days of the date of the decision of violation of this policy.
60. Within five (5) days of receiving the recommendations, the Vice-Rector shall render a decision on the appropriate sanctions and remedies, and shall immediately inform both parties, the Sexual Harassment Officer and the Chair of the Sexual Harassment Hearing Boards.
61. The Vice-Rector shall release the above decision, without nominative information, to the University newspapers if the decision is not appealed.

SANCTIONS AND REMEDIES

62. If a violation of this policy has occurred, the Hearing Board may recommend to the Vice-Rector that one or more of the following sanctions be taken against the respondent:
 - a. written reprimand or warning, copy to be kept in the personnel or student file;
 - b. imposed conditions, with or without a deposit not exceeding \$200, returnable at a specific date. Such deposits may be forfeited should any conditions be violated;
 - c. a fine not exceeding \$100;
 - d. payment not exceeding \$1000 to compensate the complainant for injury or damage to or loss of property;
 - e. exclusion from an area or function of the University for a stated period of time. If this exceeds twelve (12) months, the sanction shall be reviewed by the Hearing Board at the end of each twelve (12) month period. This sanction does not encompass the authority to suspend from any academic activity;
 - f. probation;
 - g. apology, as an alternative to any or all of the above;
 - h. community service, as an alternative to any or all of the above;
 - i. suspension, dismissal or expulsion, subject to confirmation by the Rector;
 - j. a combination of any of the above; or,
 - k. any other appropriate sanction the Hearing Board deems necessary to guarantee that the behaviour is not repeated.

63. Should the sanction be covered by a collective agreement or a University policy, the provisions of that collective agreement or policy shall apply, including grievance and arbitration procedures on sanctions.

64. If a violation of this policy has occurred, the Hearing Board may recommend to the Vice-Rector that one or more of the following remedies be taken in favour of the complainant:
 - a. reinstatement in courses;
 - b. reinstatement in a position, salary adjustment or promotion;
 - c. reassessment of an essay or final grade;
 - d. counselling;
 - e. apology;
 - f. receipt of payment for compensatory damages;
 - g. receipt of payment from a fine;
 - h. a combination of any of the above; or,
 - i. any other remedy the Hearing Board deems appropriate.

APPEALS

65. Appeals shall be heard in accordance with the procedures established under the Code of Conduct (Non-Academic).
66. The Vice-Rector shall release the decision of the Appeals Committee, without nominative information, to the University newspapers.

APPENDIX A: SUPPORT MECHANISMS

3

SEXUAL HARASSMENT OFFICE

1. A Sexual Harassment Office shall be established to allow for the centralization of education and complaint services relative to sexual harassment.
2. The mandate of the Office shall be to actively promote an environment free from sexual harassment at the University.
3. For this purpose, a Sexual Harassment Officer shall be designated and shall report to the Office of the Rector.
4. The Officer shall provide educational services and shall carry out the responsibilities enumerated in this policy. More specifically, the duties of the Officer are to:
 - a. increase awareness on the issue of sexual harassment and provide extensive education to members of the University;
 - b. publicize the Policy on Sexual Harassment to the University community, explaining the University's responsibility to act in such cases;
 - c. chair and participate actively in the Advisory Committee on Sexual Harassment;
 - d. assist and advise complainants and respondents involved in cases of sexual harassment;
 - e. maintain confidentiality with respect to nominative information in complaints of sexual harassment;

- f. provide appropriate training to the members of the Standing Panel established under the Code of Conduct (Non-Academic);
- g. provide information to Mediators on the University's employment practices, policies and collective agreements;
- h. consult with senior administrators who may be involved in the resolution of sexual harassment complaints;
- i. maintain statistics on requests for information, advice and assistance;
- j. maintain confidential files on all complaints; in cases where a complaint is withdrawn before a report of resolution is made, the name of the respondent shall be deleted;
- k. maintain a file on all records of resolution, with nominative information deleted; and,
- l. prepare an Annual Report for the University to be submitted to the Office of the Rector and to the Advisory Committee on Sexual Harassment.

3

ADVISORY COMMITTEE ON SEXUAL HARASSMENT

- 5. A permanent Advisory Committee on Sexual Harassment shall be established.
- 6. The mandate of the Committee shall be to:
 - a. assist in the development of educational programmes;
 - b. make recommendations on the continued development of the Policy on Sexual Harassment;
 - c. receive and review the Annual Report of the Sexual Harassment Officer.
- 7. The Advisory Committee shall be formed of representatives from different constituent groups of the University.
- 8. Appointments shall be made for one year and shall be renewable.